

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/152,008	09/11/98	BADT	S ALCA1100-6

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TM02/1009

EXAMINER

HARPER, K

ART UNIT	PAPER NUMBER
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2664

DATE MAILED:

10/09/01

Please find below and/or attached an Office communication concerning this application or proceeding.

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/152,008	BADT, SIG H.
	Examiner Kevin C. Harper	Art Unit 2664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 11 September 1998.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1,3 and 6-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1,3 and 6-10 is/are rejected.
- 7) Claim(s) 2 and 5 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 11 September 1998 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8,11,12</u> . | 6) <input type="checkbox"/> Other: _____                                    |

***Claim Objections***

1. Claim 1 is objected to because of the following informalities: In line 18, "identifies" should be --identities-- . Appropriate correction is required.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Applicant has provided evidence in this file showing that the invention was owned by, or subject to an obligation of assignment to, the same entity as US 5,646,936 at the time this invention was made. Accordingly, US 5,646,936 is disqualified as prior art through 35 U.S.C. 102(f) or (g) in any rejection under 35 U.S.C. 103(a) in this application. However, this applied art additionally qualifies as prior art under another subsection of 35 U.S.C. 102 and accordingly is not disqualified as prior art under 35 U.S.C. 103(a).

Applicant may overcome the applied art either by a showing under 37 CFR 1.132 that the invention disclosed therein was derived from the invention of this application, and is therefore, not the invention "by another," or by antedating the applied art under 37 CFR 1.131.

Claims 1, 3 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah et al. (5,646,936).

2. Regarding claim 1, Shah discloses a method of mapping a topology of spare capacity (Figure 5; col. 5, lines 66-67) of a DRA-based network. The method comprises the steps of

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outputting a message from one node to another concerning a spare link (Figure 8) and storing as a topology map the identities of all nodes and spare links interconnecting the nodes (Figures 2 and 5). However, Shah does not disclose identifying the port numbers. One skilled in the art would recognize that a cross-connect switch typically has port numbers identifying connections to different working paths and spare paths (col. 5, lines 18-22). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to identify the spare capacity by port number in the invention of Shah as a matter of design choice.

3. Regarding claim 3, custodial nodes attempt to establish a new link (col. 7, lines 3-7; Figure 9).
4. Regarding claims 6-10, Shah discloses mapping a spare capacity topology for network with working paths and spare paths. Request messages (Figure 8) are transmitted between various nodes. However, Shah does not disclose monitoring the spare paths. One skilled in the art would recognize that a spare path is preferably periodically monitored in order to verify that it can be used as a working path when needed. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to verify the operability of a spare path in the invention of Shah. Further, Shah does not disclose identifying the spare paths by port number. One skilled in the art would recognize that a cross-connect switch typically has port numbers identifying connections to different working paths and spare paths (col. 5, lines 18-22). Therefore, it would have been obvious to one skilled in the art at the time the invention was made to identify the spare capacity by port number in the invention of Shah as a matter of design choice. Still further, Shah does not disclose determining the number of spare links available. One skilled in the art would recognize that determining the amount of spare capacity in a network is desirable to ensure adequate spare capacity exists within the network (col. 6, lines 1-4). Therefore, it would have been obvious to one

skilled in the art at the time the invention was made to determine the number of spare links in the invention of Shah.

***Allowable Subject Matter***

5. Claims 2 and 4-5 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin Harper whose telephone number is 703-305-0139. The examiner can normally be reached weekdays, except Wednesday, from 8:00 AM to 6:30 PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wellington Chin, can be reached at 703-305-4366. The fax phone number for Technology Center (TC) 2600 is 703-872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Customer Service Office for TC 2600 at 703-306-0377.

Kevin C. Harper



October 9, 2001



HUY D. VU  
PRIMARY EXAMINER

# **Attachment for PTO-948 (Rev. 03/01, or earlier)**

**6/18/01**

**The below text replaces the pre-printed text under the heading, "Information on How to Effect Drawing Changes," on the back of the PTO-948 (Rev. 03/01, or earlier) form.**

## **INFORMATION ON HOW TO EFFECT DRAWING CHANGES**

### **1. Correction of Informalities -- 37 CFR 1.85**

New corrected drawings must be filed with the changes incorporated therein. Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin. If corrected drawings are required in a Notice of Allowability (PTO-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the Notice of Allowability. Extensions of time may NOT be obtained under the provisions of 37 CFR 1.136(a) or (b) for filing the corrected drawings after the mailing of a Notice of Allowability. The drawings should be filed as a separate paper with a transmittal letter addressed to the Official Draftsperson.

### **2. Corrections other than Informalities Noted by Draftsperson on form PTO-948.**

All changes to the drawings, other than informalities noted by the Draftsperson, **MUST** be made in the same manner as above except that, normally, a highlighted (preferably red ink) sketch of the changes to be incorporated into the new drawings **MUST** be approved by the examiner before the application will be allowed. No changes will be permitted to be made, other than correction of informalities, unless the examiner has approved the proposed changes.

#### **Timing of Corrections**

Applicant is required to submit the drawing corrections within the time period set in the attached Office communication. See 37 CFR 1.85(a).

Failure to take corrective action within the set period will result in **ABANDONMENT** of the application.